

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on April 28, 2005, in Austin, Texas. The meeting opened at 9:07 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Ric Williamson	Chair
Robert L. Nichols	Commissioner
John Johnson	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

**Administrative Staff:**

Michael W. Behrens, Executive Director  
Steve Simmons, Deputy Executive Director  
Richard Monroe, General Counsel  
Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation's Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 9:42 a.m. on April 20, 2005, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. Approval of Minutes of the March 31, 2005, regular meeting of the Texas Transportation Commission**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the March 31, 2005, regular meeting of the Texas Transportation Commission.

The commission received comments from Senator Kel Seliger.

**ITEM 2. AVIATION**

**Various Counties - Approve funding for airport improvement projects at various locations**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Aviation Director of Project Management Bill Fuller:

110040  
AVN

The Texas Department of Transportation (department) is authorized under Transportation Code, Chapter 21 and Chapter 22, to assist in the development and establishment of airports in the State of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Monday, March 21, 2005, a public hearing was held and no comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$9,134,745.

Note: Exhibit A on file with minute order clerk.

### **ITEM 3. PUBLIC TRANSPORTATION**

#### **Appoint one member to the Public Transportation Advisory Committee**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Public Transportation Interim Division Director Bobby Killebrew:

110041  
PTN

Three members of the Public Transportation Advisory Committee (committee) have terms that will expire September 30, 2005. One of the three members has recently resigned their position. Therefore, the Texas Transportation Commission (commission) makes the following appointment to serve the remainder of term for the vacated position:

Term expiring September 30, 2005:

John Wilson - Public Transportation Provider

Transportation Code, §455.004, directs the commission to appoint a nine-member committee to advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money; comment on rules or rule changes involving public transportation matters; advise the commission on the implementation of Transportation Code, Chapter 461; and perform other duties as determined by order of the commission.

Title 43, Texas Administrative Code, §1.84, administrative rules for the committee, include a provision that members serve staggered three-year terms, unless removed sooner at the discretion of the commission.

IT IS THEREFORE ORDERED by the commission that the individual identified above is appointed to serve the remainder of the unexpired term specified as a member of the Public Transportation Advisory Committee.

### **ITEM 4. DISCUSSION ITEM**

#### **Follow-up discussion on toll credit status and possible distribution criteria**

This discussion item was presented by Finance Division Director James Bass. The commission also received comments from Executive Director Edna Johnson; and Just Transportation Alliance Director Glen Gadbois.

**ITEM 5. TRANSPORTATION PLANNING****a. Brazoria and Galveston Counties - SH 99 - Authorize additional funding of \$700,000 to conduct studies for the development of Segment B of the Grand Parkway from SH 288 east to I-45**

Commissioner Nichols made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110042  
TPP

The Texas Transportation Commission (commission), by Minute Order 108543, dated June 28, 2001, authorized funding of \$8,300,000 to the Grand Parkway Association (association) for selecting and approving consultants to conduct the major investment studies, environmental studies, drainage studies, schematic design and to complete plans, specifications and estimates for facilitating the development of Segment B-1 of SH 99 (Grand Parkway), from SH 288 east to the Galveston County line, a distance of approximately 16.2 miles.

Under a separate agreement between the association and Galveston County, the county has provided \$1,200,000 for the major investment studies, environmental studies, drainage studies, and schematic design for facilitating the development of Segment B-2 of the Grand Parkway, from the Galveston County line east to I-45, a distance of approximately 10 miles.

The association and the Texas Department of Transportation have coordinated the development of a comprehensive study of the entire Segment B, from SH 288 east to I-45, a distance of approximately 26.2 miles. Both Galveston and Brazoria County officials have participated in the early public involvement activities for the project.

Due to public comments to the proposed project studies, new development and analysis is now necessary to consider additional alternatives for Segment B. This segment will also require revised modeling of toll and non-toll travel demand analysis to be consistent with commission direction and with current Houston Galveston Area Council planning and conformity efforts.

The funding which was originally approved for Segment B is insufficient for the association to complete the needed studies.

The commission finds it necessary to authorize additional funding to the association in order to expedite the timely construction of Segment B of the Grand Parkway, which is essential to the transportation needs of the citizens of Texas.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to provide additional funding of \$700,000 in order to complete the studies for the Grand Parkway, Segment B, from SH 288 east to I-45, a distance of approximately 26.2 miles. This funding will include both Brazoria and Galveston Counties' portions of Segment B.

IT IS FURTHER ORDERED by the commission that the association is hereby authorized to proceed with the additional work and to continue the project development activities.

**b. Brazoria and Fort Bend Counties - SH 99 - Authorize additional funding of \$250,000 to conduct studies for the development of Segment C of the Grand Parkway from US 59 south and east to SH 288**

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110043  
TPP

The Texas Transportation Commission (commission), by Minute Order 107648 and Minute Order 107649 dated October 29, 1998, authorized total funding of \$2,500,000 to the Grand Parkway Association (association) for selecting and approving consultants to conduct major investment studies, environmental studies, preliminary engineering and final design for facilitating the development of Segment C of SH 99 (Grand Parkway), from US 59 in Fort Bend County, south and east to SH 288 in Brazoria County, a distance of approximately 26 miles.

Under separate agreement between the association and Fort Bend County, the county has provided \$2,200,000 for the development of Segment C-1 and C-2 of the Grand Parkway, from US 59 south to the Brazoria County line, a distance of approximately 18 miles.

The association and Texas Department of Transportation have coordinated the development of a comprehensive study of the entire Segment C, from US 59 in Fort Bend County, south and east to SH 288 in Brazoria County, a distance of approximately 26 miles. A draft Environmental Impact Statement was prepared and a public hearing was held in June 2001.

Since that time, an active bald eagle nest was identified in the vicinity of the proposed project alignment. A Biological Assessment will be required to identify and propose mitigation for any impact to the eagle or its territory. Additionally, this segment will require revised modeling of toll and non-toll travel demand analysis to be consistent with commission direction and with current Houston Galveston Area Council planning and conformity efforts.

The funding which was originally approved for Segment C is insufficient for the association to complete the needed studies.

The commission finds it necessary to authorize additional funding to the association in order to expedite the timely construction of Segment C of the Grand Parkway, which is essential to the transportation needs of the citizens of Texas.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to provide additional funding of \$250,000 in order to complete the studies for Segment C of the Grand Parkway, from US 59 in Fort Bend County, south and east to SH 288 in Brazoria County, a distance of approximately 26 miles. This funding will include both Brazoria and Fort Bend Counties' portions of Segment C.

IT IS FURTHER ORDERED by the commission that the association is hereby authorized to proceed with the additional work and to continue the project development activities.

The commission received comments from Grand Parkway Association Executive Director, David Gornet.

**d. Various Counties - SH 99 - Tender a proposal to the Grand Parkway Association for the development of Segments H and I-1 of the Grand Parkway from US 59 North to I-10 east**

Commissioner Nichols made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110044  
the  
TPP

The Texas Transportation Commission (commission) authorized and approved creation of the Grand Parkway Association (association) as a transportation corporation by Minute Order 82325, dated October 25, 1984, for the purpose of facilitating the development of SH 99 (Grand Parkway), a proposed 182-mile facility from SH 146 in Galveston County to Business SH 146 East in Harris County.

The Texas Department of Transportation (department) supports the development of the Grand Parkway as a tolled facility with full multimodal capabilities.

The association and the department have received numerous inquiries as to the route of the Segments H and I-1 of the Grand Parkway, from US 59 North to I-10 East, a distance of approximately 36 miles. Development activities in the potential corridor may limit the department's ability to determine a route that avoids and minimizes impacts to the natural environment and area citizens and businesses.

Developing Grand Parkway through Segments H and I-1 will provide continuity to Segments E, F-1, F-2, and G in Harris and Montgomery Counties, which is currently in the development stages from I-10 West to US 59 North and Segment I-2 in Chambers County, which is currently under construction from I-10 East to FM 1405. In order to move forward with project development along the Grand Parkway, Segments H and I-1 need to be analyzed in a comprehensive study.

Preserving the corridor for this project is essential. The project will alleviate congestion, improve traffic flow in the north and northeast Houston metropolitan area and serve as a hurricane evacuation route.

IT IS THEREFORE ORDERED by the commission that the executive director is directed to tender the following proposal to the association:

Provided the association will:

1. Be responsible for providing the corridor feasibility studies, preliminary engineering, environmental studies, traffic and revenue studies and right of way mapping of Segments H and I-1, including entering into all necessary contracts, in accordance with all applicable state and federal laws, rules, regulations, and policies.
2. Submit all contractor invoices relating to the above studies, preliminary engineering and right of way mapping to the department for approval and payment.
3. Consider in its corridor feasibility studies the alternative of developing Segments H and I-1 as a toll road.

The department will:

1. Fund the cost of the corridor feasibility studies, environmental studies, preliminary engineering, traffic and revenue studies and right of way mapping at an amount not to exceed \$8,000,000, contingent upon consideration of the development of Segments H and I-1 as a toll road.

2. Carry out other responsibilities related to the development of Segments H and I-1 of the Grand Parkway as directed by the commission.

IT IS FURTHER ORDERED that upon acceptance of the provisions of this order by the association, the executive director is hereby authorized to enter into any necessary agreements and to proceed in the most feasible and economical manner with approved project development activities for Segments H and I-1 of the Grand Parkway.

This order shall become operative upon acceptance by the association, and if not accepted within 90 days of the date hereof, the actions contained in this order shall not be implemented.

e. **Various Counties** - Approve appointment of two members to the Grand Parkway Association's Board of Directors

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110045  
TPP

The Texas Transportation Commission (commission) by Minute Order 107794, dated March 25, 1999, re-appointed Clive Runnells and appointed John Chiang, to serve a six-year term on the Board of Directors (board) of the Grand Parkway Association, a transportation corporation created by the commission under Transportation Code, Chapter 431.

Mr. Runnells's and Mr. Chiang's terms expired on March 25, 2005.

Pursuant to Title 43, Texas Administrative Code (TAC), §15.85, the board has nominated the following person for a first term on the board and has submitted the prescribed documentation for commission review:

Hans C. "Chris" Olavson  
14015 Queensbury Lane  
Houston, Texas 77079

Pursuant to Title 43, Texas Administrative Code (TAC), §15.85, the board has nominated Mr. Chiang for a second term on the board and has submitted the prescribed documentation for commission review:

John Chiang  
1800 West Loop South, Suite 1300  
Houston, Texas 77027

The board, as authorized by the executive director of the Texas Department of Transportation, published not less than 20 days prior to the date of this order, an appropriate notice of the nominations and of its proposed consideration by the commission, and has furnished the commission with the requisite publisher's affidavit.

Based upon the review and consideration of all relevant information as documented and filed with the commission, and based upon the board's recommendation, it appears to the commission that the nominees are fully eligible and qualified to serve as members of the board in accordance with Transportation Code, Chapter 431, and with 43 TAC, Chapter 15, Subchapter H.

IT IS THEREFORE ORDERED by the commission that effective on the date of this order, Hans C. "Chris" Olavson and John Chiang are hereby appointed to serve as members on the board for the Grand Parkway Association, with terms expiring April 28, 2011.

[The commission received comments from Grand Parkway Association Executive Director, David Gornet.](#)

**c. Harris and Montgomery Counties - SH 99 - Authorize additional funding of \$2.5 million to conduct environmental studies for the development of Segments E, F-1, F-2, and G of the Grand Parkway from I-10 West to US 59 North**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110046  
TPP

The Texas Transportation Commission (commission) authorized funding of \$8,000,000, by Minute Order 107844, dated May 27, 1999, to the Grand Parkway Association (association) for selecting and approving consultants to conduct major investment studies, environmental studies and schematic design for the development of Segments E, F and G of the Grand Parkway, from I-10 West to US 59 North, a distance of approximately 52 miles.

The association, the county and the Texas Department of Transportation (department) have determined that due to public comments to the alignment of Segment F-2, a supplemental draft Environmental Impact Statement will be required for this segment in order to revisit alternative alignments. In addition, all of Segments E, F and G will require revised modeling of toll and non-toll travel demand analysis.

The funding which was originally approved by the commission is insufficient for the association to complete the needed studies for Segments E, F and G.

The commission finds it necessary to increase funding to the association in order to expedite the timely construction of Segments E, F and G of the Grand Parkway, which is essential to the transportation needs of the citizens of Texas.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to provide additional funding of \$2,500,000 in order to complete the additional studies for the Grand Parkway, Segments E, F and G, from I-10 West to US 59 North, a distance of approximately 52 miles, and the supplemental draft Environmental Impact Statement for Segment F-2, from SH 249 to I-45 North, a distance of approximately 13 miles.

IT IS FURTHER ORDERED by the commission that the association is hereby authorized to proceed with the additional work and to continue the project development activities.

[The commission received comments from Grand Parkway Association Executive Director, David Gornet.](#)

**f. Nueces County - Increase TxDOT fiscal participation in the Joe Fulton International Trade Corridor at the Port of Corpus Christi by \$5.2 million**

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110047  
TPP

In NUECES COUNTY, various rail infrastructure improvements are being proposed to allow the Port of Corpus Christi (POCC) to increase its operational efficiencies for military deployments. In addition, roadway improvements associated with the Joe Fulton International Trade Corridor project at the POCC are currently underway.

In an effort to better support additional military missions as well as increased commercial traffic at the POCC, Governor Rick Perry recently announced that the State of Texas would commit \$5.2 million to allow the port to make critically needed improvements to rail infrastructure. The proposed rail improvements consist of additional rail yard tracks for loading/unloading of rail cargo and the rehabilitation of existing rail yard lines for rail delivery into the port.

To enable the POCC to make these rail improvements, it is necessary to increase the Texas Department of Transportation's participation in the Joe Fulton International Trade Corridor highway project by \$5.2 million, which will alleviate a portion of the POCC's financial responsibility for the project, therefore allowing the POCC to redirect its focus toward rail infrastructure improvements.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is hereby authorized to increase the department's Strategic Priority funding participation in the construction of the Joe Fulton International Trade Corridor highway project by \$5.2 million and amend the existing agreement with the POCC to allow for the transfer of these funds as described.

The commission received comments from Port of Corpus Christi Executive Director, John LaRue.

**g. Various Counties - Authorize the 2005 Federal Discretionary Program projects**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

110048  
TPP

The Texas Department of Transportation (department) annually receives notification from the Federal Highway Administration (FHWA) concerning projects that will receive federal discretionary or General Provision earmark funding.

Generally, various state departments of transportation submit candidate projects to the FHWA for consideration of receiving federal funds. Another method through which states receive earmarked funds is when projects are submitted by members of the U. S. Congress representing that part of the state. For Fiscal Year 2005, the department has been notified that 17 projects identified in Exhibit A will receive federal funding.



IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is hereby authorized to proceed in the most feasible and economical manner with project development and program monitoring of the identified projects in the FY 2005 Federal Discretionary Program.

Note: Exhibit A on file with minute order clerk.

The commission also received comments from Legislative Affairs Office Director Coby Chase.

#### **ITEM 6. DISCUSSION ITEM**

**Consultant Selection Process** - Discuss proposed changes to the consultant selection process to meet Texas Transportation Commission goals to incorporate and reward innovative engineering concepts and increase the number of firms, especially Disadvantaged Business Enterprises and Historically Underutilized Businesses, that contract with the department and compare work product costs with work product hours

This discussion item was presented by Assistant Executive Director for Engineering Operations Amadeo Saenz, Jr.

#### **ITEM 7. TRAFFIC OPERATIONS**

**Brazos and Grimes Counties** - Authorize the executive director to negotiate agreements with the Texas Municipal Power Agency for construction of a spur railroad track at the proposed SH 6 frontage roads and grade separation at FM 2154 in Brazos County, and under the existing grade separations of SH 30 and FM 244 in Grimes County

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

110049  
TRF

In BRAZOS and GRIMES COUNTIES, the Texas Municipal Power Agency (TMPA) proposes to construct a spur railroad track to secure a connection to the Union Pacific Railroad Company's existing tracks in order to haul in coal used to operate the Gibbons Creek Steam Electric Station in Grimes County.

The construction of the new spur track will require at-grade railroad crossings across the proposed frontage roads and overpass structure of SH 6 at the intersection of FM 2154 in Brazos County. The at-grade crossings will include the installation of necessary safety control devices.

In addition, the construction of the new spur track will require TMPA to construct the rail spur under existing grade separations at SH 30 and FM 244 in Grimes County.

The TMPA has agreed to fund 100 percent of the costs associated with the engineering and construction of the at-grade crossings and installation of the safety control devices in accordance with the standards and policies of the department. All costs associated with modifying the proposed SH 6 structure over FM 2154 and the existing structures at SH 30 and FM 244 will be the responsibility of TMPA.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is authorized to enter into any necessary agreements for the construction of the new at-grade crossings across the frontage roads of SH 6 and under the proposed SH 6 grade separation over FM 2154 and under the existing grade separations of SH 30 and FM 244.

#### **ITEM 8. TRANS-TEXAS CORRIDOR**

##### **Appointment of additional members to the Trans-Texas Corridor Advisory Committee**

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110050  
TTA

Pursuant to 43 TAC §1.85(a)(5), the Texas Transportation Commission (commission) may by order create an advisory committee concerning the Trans-Texas Corridor or a project that is part of the Trans-Texas Corridor for the purpose of facilitating and achieving support and consensus from affected communities, governmental entities, and other interested parties in the planning of the Trans-Texas Corridor and in the establishment of development plans for a project that is part of the Trans-Texas Corridor.

Under 43 TAC §1.85(a)(5), a Trans-Texas Corridor advisory committee shall provide advice and recommendations to the Texas Department of Transportation (department) regarding facilities to be included in a development plan for the Trans-Texas Corridor or a project that is part of the Trans-Texas Corridor.

Section 1.85 provides that an advisory committee shall be composed of not more than 24 members, and shall report its advice and recommendations to the executive director of the department or designee.

Pursuant to Minute Order 110009, dated March 31, 2005, the commission appointed 21 members to the advisory committee.

IT IS THEREFORE ORDERED by the commission that the individuals identified in the attached Exhibit A are appointed as members of the Trans-Texas Corridor Advisory Committee.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 9. TURNPIKE PROJECTS**

a. Authorize payment for the work product of unsuccessful proposers submitting responsive detailed proposals to plan, develop, acquire, design, construct, and maintain an Open-Road Toll Collection System for district turnpike project implementation support

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110051  
TTA

Transportation Code, §361.3022(m) requires the Texas Department of Transportation (department) to pay an unsuccessful private entity that submits a response to a request for detailed proposals for the construction, maintenance, repair, operation,

extension, or expansion of a turnpike project under a comprehensive development agreement a stipulated amount of the final contract price for any costs incurred in preparing that proposal. As defined in Transportation Code, §361.001, a turnpike project includes facilities the department considers necessary to operate the project.

The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions.

On December 3, 2004, the department issued a request for qualifications (RFQ) for the development, design, construction, and maintenance of a statewide open-road toll collection system on department toll roads, and potentially to operate a customer service center, through a comprehensive development agreement. The department determined that three of the proposer teams submitting qualification submittals in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals for the project, and anticipates issuing a request for detailed proposals to develop, design, construct and maintain a statewide open-road toll collection system in May 2005.

In the request for detailed proposals, the department anticipates requesting detailed information on the system design and other information from the short listed proposers that may be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of other department projects without further payment to the applicable proposers. Payment for the work product of proposers is also anticipated to provide an incentive to potential proposers to participate in the procurement process and to increase the quality of detailed proposals submitted for the project.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized to pay to each proposer that submits a responsive, but unsuccessful detailed proposal for the development, design, construction, and maintenance of a statewide open-road toll collection system an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or his designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$100,000.

IT IS FURTHER ORDERED that compensation may only be paid if the work product submitted meets the minimum criteria and other conditions to payment identified by the department in the procurement documents.

**b. Dallas County - Authorize the department to issue a request for qualifications to develop, design, construct, finance, maintain, and operate the proposed tolled, managed lanes along I-635 from US 75 to I-35E and then south to the I-35/Loop 12 split**

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110052  
TTA

Subchapter I, Chapter 361, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design,

construction, financing, maintenance, or operation of a turnpike project on the state highway system.

The department has been in development of the I-635 project as a managed lanes project and has now received full environmental clearance by receipt of a finding of no significant impact (FONSI) on April 29, 2004 from the Federal Highway Administration.

Section 361.3022, Transportation Code prescribes requirements for a solicited proposal and requires the department to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate any qualification submittals, the relative weight given to the criteria, and a deadline by which qualification submittals must be received.

Development of this project is a crucial element in responding to severe recurrent traffic bottlenecks and congestion that occurs on a daily basis along the proposed project corridor. The I-635 project interconnects and bisects many of the region's most critical north-south facilities (US 75, the Dallas North Tollway, I-35E, Preston Road and Midway Road). The magnitude and scope of the planned and environmentally approved solution will benefit from implementation through the CDA approach.

The near completion of the Dallas High Five project (the interchange of I-635 and US 75) will provide increased capacity to serve the needs of I-635 to the west toward I-35E. To further meet these needs, the I-635 project includes managed lanes in two tunnels located underneath the I-635 general purpose lanes. This innovative design solution includes a plan to interconnect these lanes to and through the I-35E interchange south to the Loop 12 and I-35E split. There exists the potential for expediting the completion of this innovative project through the development of a public/private partnership under a CDA.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized and directed to publish in the *Texas Register* and in one or more newspapers of general circulation a request for qualifications for the development of proposed tolled managed lanes along I-635 from US 75 to I-35E and then south to the I-35E and Loop 12 split in Dallas County, and other facilities to the extent necessary for connectivity, mobility, safety, and financing.

**c. Travis and Williamson Counties - Request Central Texas Regional Mobility Authority to participate in the study and development of various turnpike projects**

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110053  
TTA

Chapter 370, Transportation Code, authorizes regional mobility authorities to study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that the projects are included in a plan approved by the applicable metropolitan planning organization and that the projects are consistent with the statewide transportation plan and the statewide transportation improvement program.

The Texas Department of Transportation (department) and the Central Texas Regional Mobility Authority (CTRMA) developed a "CTRMA/TxDOT Regional Implementation Program" (program) that provides for the funding and development of certain transportation system improvements within the jurisdictional limits of the CTRMA.

On July 12, 2004, the Capital Area Metropolitan Planning Organization (CAMPO) Transportation Policy Board approved amendments to CAMPO's 2025 Transportation Plan and the FY 2004-FY 2008 Transportation Improvement Program (TIP), authorizing the development of projects in the program as toll roads subject, in certain instances, to conditions imposed by certain clarifying resolutions.

Projects added to the 2025 Transportation Plan and the FY 2004-FY 2008 TIP as part of the program include: (1) US 290 West/SH 71 interchange (the "Y" in Oak Hill), (2) US 183 East from I-35 to SH 71, (3) SH 45 Southwest from Loop 1 to FM 1626, (4) US 290 East from US 183 to SH 130, and (5) SH 71 East from I-35 to the Austin-Bergstrom International Airport (Phase 2 projects).

There exists the potential for expediting the completion of the Phase 2 projects by financing a portion of those projects' design and construction costs through the use of turnpike financing. The Texas Transportation Commission (commission) recognizes that innovative financing methods, including tolls, are an effective means of maximizing the use of limited available resources, without compromising the quality of Texas' transportation system. The commission encourages the development of partnerships and the employment of innovative methods to finance and construct needed transportation improvements.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the Central Texas Regional Mobility Authority is requested to take such actions or conduct such studies and evaluations as may be necessary to determine the viability of jointly developing and financing with the department the Phase 2 projects.

IT IS FURTHER ORDERED that the Central Texas Regional Mobility Authority is requested to present, in coordination with the department, proposals identifying the relative rights and obligations of the department and CTRMA in the planning, design, financing, construction, operation, and ownership of the Phase 2 projects.

The commission received comments from Central Texas Regional Mobility Authority Director, Mike Heiligenstein; and Central Texas Regional Mobility Authority Chairman Bob Tesch.

**d. Travis and Williamson Counties - Accept the General Engineering Consultant quarterly progress report as of February 28, 2005 for the 2002 Project of the Central Texas Turnpike System**

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110054  
TTA

In TRAVIS and WILLIAMSON COUNTIES, State Highway 130 has been designated a turnpike project and a controlled access state highway from Interstate Highway 35 north of Georgetown to a southern terminus at US Highway 183.

In TRAVIS and WILLIAMSON COUNTIES, State Highway 45N has been designated a turnpike project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, State Highway Loop 1 has been designated a turnpike project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

The Texas Transportation Commission (commission) has issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike Project, a turnpike project composed of the SH 130, SH 45N, and Loop 1 project elements (2002 Project), and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending February 2005, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 10. FINANCE**

**Travis and Williamson Counties - Accept the Quarterly Investment Report as of February 28, 2005, as required by the Public Funds Investment Act, Government Code, Chapter 2256**

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Finance Division Director James Bass:

110055  
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, and Minute Order 109963, dated February 24, 2005. The commission has designated the department's Director of Finance and Deputy Director of Finance as investment officers.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the period ending February 28, 2005, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 11. PASS-THROUGH TOLL**

**a. Jefferson County - City of Port Arthur - Authorize the executive director to negotiate a pass-through toll agreement with the City of Port Arthur for improvements to FM 365 from Spur 93 to US 69 and from Jade Avenue ending east of the proposed Union Pacific railroad overpass**

Commissioner Houghton made a motion, seconded by Commissioner [Johnson](#), and the commission approved the following minute order presented by Finance Division Director James Bass:

110056  
FIN

On January 11, 2005, the city of Port Arthur (city) submitted a proposal for a pass-through toll agreement. The city's proposal, among other things, provided for the city to construct and make improvements to FM 365 from Spur 93 to US 69 and from Jade Avenue ending east of the proposed Union Pacific railroad overpass.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a facility.

The Texas Transportation Commission (commission) previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state, subject to the outcome of the negotiations with the city; (2) the city's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Beaumont – Port Arthur Metropolitan Planning Organization (B-PAMPO); (5) potential benefits to regional air quality must be quantified and documented by B-PAMPO through the air quality conformity process in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the city lacks significant experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the B-PAMPO Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for each project; (3) prior to construction, must be included in the B-PAMPO Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.



IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with the city of Port Arthur. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

b. Parker County - **City of Weatherford** - Authorize the executive director to execute a pass-through toll agreement with the City of Weatherford for improvements to SH 171/FM 51, FM 2552, eastbound and southbound frontage roads from South Bowie Street to FM 1884, overpass at Holland Lake Road, and construction of SH 171/FM 51 north of I-20

This item was deferred.

The commission received comments from General Counsel Richard Monroe Weatherford Mayor Joe Tison; and Parker County Judge Mark Riley.

#### **ITEM 12 STATE INFRASTRUCTURE BANK**

**Hidalgo County** - Grant final approval of an application from Hidalgo County to borrow \$1.38 million from the State Infrastructure Bank to purchase right-of-way for the reconstruction of FM 1015 from Mile 9 to Mile 12

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Finance Division Director James Bass:

110057  
FIN

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank (SIB) for the purpose of making loans and providing other financial assistance to public and private entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce state costs.

Pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department).

The provision of capital to the SIB will result in the reduction of burdens and demands on the limited funds available to the Texas Transportation Commission (commission) and an increase in the effectiveness and efficiency of the department by allowing the SIB to provide financial assistance to eligible transportation projects.

Pursuant to Transportation Code, Chapter 222, Subchapter D, the commission has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB. These rules are codified as Title 43, Texas Administrative Code, Chapter 6.

Title 43, Texas Administrative Code, §6.23 authorizes eligible entities to submit applications for financial assistance from the SIB and prescribes requirements for an application.

In accordance with 43 TAC §6.32, on February 24, 2005, in Minute Order 109966, the commission granted preliminary approval of an application from Hidalgo County (county) to borrow \$1.38 million from the SIB to pay for right of way costs made necessary by the reconstruction of FM 1015 from Mile 9 to Mile 12 in Hidalgo County. The county has represented that the loan will be secured by general and road and bridge funds. The county has submitted evidence of a Moody's A3 bond rating. The present and projected financial condition of the SIB is sufficient to cover this request.

On July 13, 2004, the Hidalgo County Commissioner's Court passed a resolution authorizing submission of this application to the SIB. This resolution indicates the official written approval of the projects by the governing body of the county and demonstrates local public support.

The project is on the state highway system, is eligible for federal aid and is currently authorized with Category 8, Safety funds and by the commission with federal hazard elimination funds. The project is consistent with the Texas Transportation Plan and is included in the Statewide Transportation Improvement Program.

The proposed project and loan conform with the purpose of the SIB and will expand the availability of funding for transportation projects and reduce direct state costs.

All necessary social, economic, and environmental studies have been completed and no further coordination is required. The project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

In accordance with 43 TAC §6.31, the department has reviewed and analyzed the application, finds the application to be in compliance with the requirements of 43 TAC, Chapter 6, and recommends that the commission grant final approval of the application pursuant to 43 TAC §6.32.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by Hidalgo County meets the requirements of 43 TAC §6.32(b) and §6.32(e) and, in accordance with those sections, the commission grants final approval of the application to borrow \$1.38 million from the State Infrastructure Bank, to be repaid over a period of 8 years at 3.75 percent interest per annum, and authorizes and directs the executive director to enter into a financial assistance agreement with the city.

### **ITEM 13. RIGHT OF WAY**

**Travis County - Authorize the negotiation of options to purchase for the advance acquisition of right of way for US 290 East**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

110058  
ROW

In TRAVIS COUNTY, a project has been proposed to develop US HIGHWAY 290, a proposed toll facility from east of US 183 to east of SH 130, in Travis County.

Although construction of the project is not yet authorized and no final determination has been made on the alignment of the project, preserving the transportation corridor and the completion of the US 290 project is essential and urgent, as the construction of the project would alleviate congestion and improve traffic flow in the Austin area and the surrounding regions.

Transportation Code, §201.103 and §361.032 authorize the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads as well as turnpike projects.

Transportation Code, §§203.051, 203.052, 361.131 and 361.132 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway or turnpike project, including property necessary or convenient to protect a state highway or turnpike project or to accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of such a project.

Transportation Code, §202.112 authorizes the commission to purchase an option to acquire property for possible use in, or in connection with, a transportation facility before a final decision has been made as to whether the transportation facility will be located on that property.

The commission finds that use of options to acquire property for possible use in connection with the US 290 project may reduce the time required for the acquisition of right of way and can be economically beneficial to the state by either establishing the purchase price at current market value as of the date of the option contract or establishing a methodology for determining a purchase price at the time the option is exercised without the necessity for condemnation, and/or agreeing to restrictions on the owner's future development and improvement of the property. Successful negotiation of options for this project will help preserve the transportation corridor and benefit both the public and land owners along the proposed route.

IT IS THEREFORE ORDERED by the commission that the Austin district engineer is authorized to negotiate with property owners along the proposed route of US 290 and execute option contracts for the purchase of property of a size and in a location as is reasonably related to the possible future design and alignment of such transportation facility, and to expend funds for option fee payments, surveys, title examinations, appraisals and other expenses reasonably necessary to purchase the options.

#### **ITEM 14. CONTRACTS**

##### **a. Award or Reject Highway Improvement Contracts**

##### **(1) Maintenance**

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order, rejecting Project No. RMC - 611635001 in Bexar County as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110059  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on April 7 and 8, 2005.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway maintenance contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

## **(2) Highway and Building Construction**

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Construction Division Director Thomas Bohuslav:

110060  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on April 7 and 8, 2005.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway improvement contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

**b. Contract Claims**

**(1) Chambers County - Project IM 10-8(146) - Approve a claim settlement with W.W. Webber, Inc. for additional compensation**

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110061  
AEO

In CHAMBERS COUNTY on INTERSTATE HIGHWAY 10, W. W. Webber, Inc. (contractor) was awarded construction project IM 10-8(146) in the amount of \$10,381,768.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amount of \$285,070.12 for maintaining a section of roadway partially completed and opened to traffic during phased construction.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claim was successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$140,000 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$140,000 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

**(2) Trinity County - Project BR 98 (430) - Approve a claim settlement with Rosiek Construction Co. for additional compensation**

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110062  
AEO

In TRINITY COUNTY on STATE HIGHWAY 19, Rosiek Construction Co., Inc. (contractor) was awarded construction project BR 98(430) in the amount of \$16,700,594.42.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amount of \$946,525.76 for home-office overhead costs and bonuses for the management staff due to a project delay caused by an embankment failure. Many costs were agreed to which resulted in a change order for \$1.2 million, but the contractor was not compensated for the home-office overhead costs and management staff bonuses.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claim was successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$275,000 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$275,000 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

#### **ITEM 15. BUILDING CONSTRUCTION**

Conditional approval of lease with option to purchase new improvements for the Houston district headquarters complex and finalize pricing and financial terms

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Deputy Executive Director Steve Simmons:

110063  
DED

Transportation Code, Section 201.1055, authorizes the Texas Department of Transportation (department) to enter into an agreement that includes design and construction of a district office headquarters facility in a county with a population of 3.3 million or more; lease department-owned real property in such a district to a private entity; authorize a private entity to construct and retain ownership of a building on the leased property and enter into a lease with an option to purchase such a building.

The department desires to renovate certain buildings and construct new buildings ("New Improvements") for the Houston District Headquarters, designated as the Houston District Headquarters Complex Project (Project), and lease to a private entity certain portions of the department property upon which the New Improvements will be constructed by a private entity, with the private entity retaining ownership of the New Improvements and the department leasing with an option to purchase the New Improvements from the private entity.

The department issued Request for Qualification No. CBC4704-00-377 on January 16, 2004 and Addenda dated February 19, 2004 and February 27, 2004 to which, among other proposers, Gilbane Properties, Inc. (Gilbane) responded on March 8, 2004

and, being among the top four proposers, then submitted on July 19, 2004 a proposal to design, construct, finance and lease with an option to purchase the Project pursuant to the department's Request for Proposal dated April 4, 2004 and Addenda dated April 12, April 15, June 9 and July 2, 2004.

The commission by Minute Order No. 109807, dated September 30, 2004, approved the initiation of negotiations for the Project with the top four ranked proposers according to their numerical ranking.

Gilbane was determined by the department to be the first ranked proposer and also to offer the best value to the State; negotiations for the design, construction, financing, and lease with an option to purchase have been ongoing.

Gilbane is proposing financing the New Improvements through the issuance of certificates of participation by a third party trustee, which certificates represent an interest in the payments to be made by the department under a lease with an option to purchase. The proceeds from the certificates of participation will fund the design and construction of the Project. The department's rental payments will be distributed by the trustee to the owners of the certificates of participation.

Gilbane has arranged for Citigroup Global Markets Inc. to serve as the underwriter for the certificates of participation.

Substantially final copies of: (i) the Ground Lease Agreement between the State of Texas acting by and through the department, as lessor and Gilbane as assigned to GP DOT Houston Holdings, LP (Ground Lease); (ii) the Development Agreement for Houston District Headquarters Complex (Development Agreement) between the department and Gilbane as assigned to GP DOT Houston Development, LP and guaranteed by Gilbane; and (iii) the Lease with an Option to Purchase Relating to Texas Department of Transportation Houston District Headquarters Complex Project between GP DOT Houston Holdings, LP and the department (LWOP) (the Ground Lease, Development Agreement, and LWOP collectively referred to as "Transaction Documents"), are attached hereto.

Government Code, Section 1231.041, provides that an entity issuing a state security, including lease-purchase obligations in excess of \$250,000 or with a stated term of more than five years, may not do so unless approved by the Texas Bond Review Board (Board). By Minute Order 109939, dated January 27, 2005, the commission authorized making application for Board approval of the LWOP.

IT IS THEREFORE ORDERED by the commission that, subject to receipt of approval of the LWOP by the Board, the department proceed to finalize the pricing and financial terms of the LWOP and to present to the commission final Transaction Documents for approval and execution at a future meeting.

IT IS FURTHER ORDERED that the Director of the Finance Division and the Deputy Director of the Finance Division are designated as the department representatives to perform such acts as may be necessary to carry out the intent of this order including, upon receipt of Board approval, finalizing information about the department and the Project in any preliminary official statement used to market the certificates of participation and "deeming final" such preliminary official statement as required by Rule 15c2-12 of the Securities and Exchange Commission.

The commission received comments from Finance Division Deputy Director John Munoz.

**ITEM 16. ROUTINE MINUTE ORDERS**

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute orders, presented by Executive Director Michael W. Behrens.

**a. Donation to the Department**

**Travis County - Acknowledge a donation from the National Steel Bridge Alliance (NSBA) for a department employee's travel expenses to attend the American Association of State Highway and Transportation Officials/NSBA Steel Bridge Collaboration Committee Meetings to be held in Charleston, South Carolina from April 25-28, 2005**

110064  
OGC

The National Steel Bridge Alliance (NSBA) donated an estimated \$1,264.10 for travel expenses for a Texas Department of Transportation (department) employee to attend the American Association of State Highway and Transportation Officials/NSBA Collaboration Committee Meetings in Charleston, South Carolina from April 25-28, 2005.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties.

Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 90th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission finds that the donor is interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would nonetheless provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.



IT IS THEREFORE ORDERED by the commission that the estimated donation of \$1,264.10 by NSBA is accepted. The executive director or his designee is authorized to execute all necessary documents under 43 TAC §1.504 to accept the donation.

**b. Eminent Domain Proceedings**

**(1) Travis and Williamson Counties - controlled access turnpike projects**

110065  
ROW

The Texas Transportation Commission (commission) has determined that in order to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its highways, public necessity requires the construction, expansion, enlargement, extension, or operation of the following turnpike projects in this state as a part of the state highway system (highway system), as described in this order.

The commission has determined that each of the following listed parcels of land, each being more particularly described in the exhibits attached to this order and being designated, identified, and listed by an alphabetical exhibit reference in this order under "CONTROLLED ACCESS", and such additional lesser estates or property interests described in the exhibits, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Transportation Code, §361.131, §361.132, §361.135, and §203.054, as a part of the highway system to be constructed, expanded, enlarged, extended, or operated thereon.

The commission has determined that in order to facilitate the flow of traffic and promote the public safety and welfare and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the turnpike projects to be constructed on said parcels of land are designated as controlled access highways, and on such parcels of land where there is remaining abutting private property, roads are to be built as a part of said turnpike projects whereby the right of ingress and egress to or from the remaining private property abutting on said turnpike project is to be permitted and/or denied, as designated and set forth on each of the exhibits attached to this order.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner of the parcels of land described in the attached exhibits and has been unable to agree with such owner as to the fair market value of said parcels of land and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized and directed to transmit this request to the attorney general to file or cause to be filed against all owners, lienholders, and any owners of other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the following exhibits attached to this order, and such additional lesser estates or property interests as are more fully described in each of the following exhibits, save and excepting oil, gas and sulphur as provided by law:

**CONTROLLED ACCESS**

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
A	Travis	SH 130	0440-06-008	365 & 365E
B	Travis	SH 130	0440-06-008	1309
C	Travis	SH 130	0440-06-008	1413, pts 1&2

**(2) Various Counties - noncontrolled and controlled access highways**

110066  
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

## NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Starr	US 83	0038-06-034	5
2	Robertson	SH 6	0049-06-070	11
3	Robertson	SH 6	0049-06-070	30
4	Brazos	SH 6	0050-02-087	17&17E
5	Shelby	US 96	0063-06-086	1
6	Bastrop	US 290	0114-04-060	1
7	Bastrop	US 290	0114-04-060	3
8	Brazoria	SH 35	0178-02-072	6
9	Brazoria	SH 35	0178-02-072	45C
10	Brazoria	SH 35	0178-02-072	48
11	Brazoria	SH 35	0178-02-072	66
12	Brazoria	SH 35	0178-02-072	70
13	Henderson	US 175	0197-06-045	9
14	Henderson	US 175	0197-06-045	11
15	Somervell	US 67	0259-03-047	13
16	Cooke	FM 922	0845-03-047	52
17	Johnson	FM 917	1181-04-035	8&8E
18	Harris	SH 6	1685-05-082	25
19	Williamson	FM 1460	2211-02-014	9
20	Williamson	FM 1460	2211-02-014	26

## CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Hill	IH 35	0014-07-090	1
B	Hill	IH 35	0014-07-090	4
C	Bell	IH 35	0015-14-117	1
D	Bell	IH 35	0015-14-117	23
E	Bell	IH 35	0015-14-117	27
F	Collin	US 75	0047-06-125	2
G	Collin	US 75	0047-06-125	7
H	San Jacinto	US 59	0177-02-066	38
I	Harris	IH 10	0271-07-237	630
J	Harris	IH 10	0271-07-261	239
K	Harris	IH 10	0271-07-264	105
L	Harris	SH 249	0720-03-076	404

**c. Load Zones & Postings****Various Counties - Revise load restrictions on the state highway system:****(1) Roadways**

110067  
CST

The Texas Transportation Commission (commission) under provision of Texas Transportation Code §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made on the state highway system to determine and fix the maximum loads to be transported or moved on, over or upon the roads of the highway system.

It has been determined from this investigation that the loads on certain sections of roads of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon those roads as described in Exhibit A be fixed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the fixing, revisions or removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

**(2) Bridges**

110068  
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over those bridges described in Exhibits A and B be placed, revised, or removed as set forth therein, superseding any portion of previous action in

conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the placement, revision, or removal of these load limitations effective and operative.

Note: Exhibits A and B on file with minute order clerk.

**d. Right of Way Dispositions and Donations**

**(1) Bexar County - Loop 13, northeast corner at old US 181 in San Antonio - Amend Minute Order 110028 to include the correct reference to state law for the sale of surplus right of way**

110069  
ROW

In the city of San Antonio, BEXAR COUNTY, on LOOP 13, the State of Texas (state) acquired certain land needed for state highway purposes by instrument recorded in Volume 1877, Page 290, Deed Records of Bexar County, Texas.

The Texas Transportation Commission (commission) approved Minute Order 110028 on March 31, 2005 authorizing the sale of surplus land. The minute order made an incorrect reference to the state law for the sale of surplus right of way. The reference is being corrected by this minute order.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the sale of surplus land to the abutting landowner.

NOW, THEREFORE, IT IS ORDERED that Minute Order 110028 be amended only with respect to the incorrect reference to the state law in that minute order, and all other provisions of Minute Order 110028 are to remain unchanged.

FURTHER, the commission recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying of all of the state's rights, title and interest in the surplus land to the abutting landowner, Rene G. Jaso, M.D.

**(2) Bexar County - Spur 421, southeast corner at NW 22<sup>nd</sup> Street in San Antonio - Consider the sale of surplus right of way**

110070  
ROW

In the city of San Antonio, BEXAR COUNTY, on SPUR 421, the State of Texas (state) acquired certain land for state highway purposes by instrument recorded in Book 9886, Page 1686, Deed Records of Bexar County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation advertised the surplus land for sale.

Presto Tierra, Ltd., (limited partnership) submitted a bid of \$16,455, which was the only bid received.

The Texas Transportation Commission (commission) finds \$16,455 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the limited partnership for a cash consideration of \$16,455; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas,

sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(3) Cameron County - SH 48 from Shrimp Basin NE to SH 100 southwest of Port Isabel - Consider the donation of 9.321 acres for a highway project**

110071  
ROW

In CAMERON COUNTY, on SH 48, from Shrimp Basin to SH 100 near Port Isabel, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

The Brownsville Navigation District of Cameron County, Texas (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at \$6,059 to the department for a highway improvement project.

Although the owner may be subject to department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

A donation agreement has been executed by the owners and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, §1.504.

Note: Exhibit A on file with minute order clerk.

**(4) Dallas County - I-635 at Belt Line Road in Irving - Consider the sale of surplus right of way**

110072  
the  
ROW

In the city of Irving, DALLAS COUNTY, on INTERSTATE HIGHWAY 635, State of Texas (state) acquired certain land needed for state highway purposes by instrument recorded in Volume 75194, Page 367, Deed Records of Dallas County, Texas.

A portion of the land (surplus right of way), described in Exhibit A, Parts 1 and 2, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowner.

Second Century Investments, a Texas general partnership, is the abutting landowner and has requested that the surplus right of way be sold to the partnership for \$128,168.

The commission finds \$128,168 to be a fair and reasonable value for the state's rights, title and interest in the surplus right of way.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus right of way to Second Century Investments, a Texas general partnership, for \$128,168; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(4) Dallas County - I-635 at Belt Line Road in Irving - Consider the sale of surplus right of way**

110073  
the  
ROW

In the city of Irving, DALLAS COUNTY, on INTERSTATE HIGHWAY 635,

State of Texas (state) acquired certain land needed for state highway purposes by instrument recorded in Volume 75194, Page 367, Deed Records of Dallas County, Texas.

A portion of the land (surplus right of way), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowner.

SMPD-Texas-Irving-203, LLC is the abutting landowner and has requested that the surplus right of way be sold to the company for \$80,988.

The commission finds \$80,988 to be a fair and reasonable value for the state's rights, title and interest in the surplus right of way.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus right of way to SMPD-Texas-Irving-203, LLC for \$80,988; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(4) Dallas County - I-635 at Belt Line Road in Irving - Consider the sale of surplus right of way**

110074  
the  
ROW

In the city of Irving, DALLAS COUNTY, on INTERSTATE HIGHWAY 635,

State of Texas (state) acquired certain land needed for state highway purposes by instrument recorded in Volume 75194, Page 367, Deed Records of Dallas County, Texas.

A portion of the land (surplus right of way), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowner.

Travelers Insurance Company, a Delaware corporation, is the abutting landowner and has requested that the surplus right of way be sold to the corporation for \$324,845.

The commission finds \$324,845 to be a fair and reasonable value for the state's rights, title and interest in the surplus right of way.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus right of way to Travelers Insurance Company, a Delaware corporation, for \$324,845; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(5) Denton County - US 380 from US 77 to Loop 288 in Denton - Consider the purchase of uneconomic remainder**

110075  
ROW

In DENTON COUNTY, on US HIGHWAY 380, the Texas Department of Transportation (department) is in the process of acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code §203.0521, provides that if a proposed acquisition of real property under §203.052 would leave the owner of the property a remainder of a tract, then the Texas Transportation Commission (commission) shall offer to purchase the remainder if the commission makes certain determinations as set out in §203.0521.

The remainder of the tract of land, described in Exhibit A, meets the requirements set out in §203.0521, in that the remainder has little or no value or utility to the owner.

The owner of the remainder has requested that the department purchase the remainder tract along with the tract needed for highway purposes.

NOW, THEREFORE, the commission finds that the remainder of the tract of land, described in Exhibit A, be classified as an uneconomic remainder and an offer to purchase said tract along with the tract needed for highway purposes be made to the owner.

Note: Exhibit A on file with minute order clerk.

**(6) Franklin County - SH 11 from north of FM 852, at West Pine Street in northwest Winnsboro - Consider the donation of 0.596 acres for a landscaping project**

110076  
ROW

In FRANKLIN COUNTY, on SH 11, from North of FM 852 at West Pine Street in northwest Winnsboro, the Texas Department of Transportation (department) is acquiring the right of way for a highway landscaping project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.



V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

The City of Winnsboro (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at \$2,400 to the department for a highway landscaping project.

Although the owner may be subject to department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

A donation agreement has been executed by the owners and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, §1.504.

Note: Exhibit A on file with minute order clerk.

**(7) Harris County - I-10 at Mason Road approximately two miles east of Katy - Consider the sale of surplus access rights**

110077  
ROW

In HARRIS COUNTY, on INTERSTATE HIGHWAY 10, a designated controlled access highway, the State of Texas (state) owns and controls certain access rights to the highway facility to and from the abutting lands.

A portion of the access rights (surplus access rights), described in Exhibit A, is no longer needed for a state highway purpose.

Mason & I-10, Ltd. (Mason), owner of a 132.37 acre tract of land conveyed by deed recorded under Harris County Clerk's File Number R263717 of the Official Public Records of Real Property of Harris County, Texas (Mason Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Mason for \$326,700.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus access rights to the abutting landowner.

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to Mason for a cash consideration of \$326,700.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument conveying the state's interest in the surplus access rights to Mason for \$326,700.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Mason Tract and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Mason Tract.

Note: Exhibit A on file with minute order clerk.

(8) **Smith County** - Loop 323, east side, 0.8 mile north of SH 155 in Tyler - Consider the sale of surplus right of way

110078  
ROW

In the city of Tyler, SMITH COUNTY, on LOOP 323, the State of Texas (state) acquired certain land needed for state highway purposes by instrument recorded in Volume 835, Page 621, Deed Records of Smith County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

Barrett Loop West Investments, L.P., (partnership) is the abutting landowner and has requested that the surplus land be sold to the partnership for \$43,362.

The commission finds \$43,362 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the partnership for \$43,362; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(9) **Webb County** - I-35 at Shiloh Drive in Laredo - Consider the sale of surplus right of way

110079  
ROW

In the city of Laredo, WEBB COUNTY, on Interstate Highway 35, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded in Volume 713, Page 351, Deed Records of Webb County, Texas.

The land, described in Exhibit A, and the improvements (surplus property) are no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation advertised the surplus property for sale.

Eddie Jacaman submitted a bid of \$1,501,000, which was the highest valid bid received.

The Texas Transportation Commission (commission) finds \$1,501,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus property.

NOW, THEREFORE, the commission finds that the surplus property is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the

state's rights, title and interest in the surplus property to Eddie Jacaman for a cash consideration of \$1,501,000; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus property.

Note: Exhibit A on file with minute order clerk.

**e. Speed Zones**

**Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state**

110080  
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portions of minute orders establishing the speed zone shown on the attached Exhibit C is canceled.

Note: Exhibits A, B, and C on file with minute order clerk.

**ITEM 17. Executive Session** Pursuant to Government Code, Chapter 551

- a. **Section 551.071** - Consultation with and advice from legal counsel
- b. **Section 551.072** - Discussion of real property purchase, exchange, lease, donations
- c. **Section 551.074** - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

The commission did not meet in executive session.

**OPEN COMMENT PERIOD** - The commission did not receive comments.

Commissioner [Nichols](#) made a motion, seconded by Commissioner [Johnson](#), and the commissioners approved adjourning the meeting.

The regular meeting of the Texas Transportation Commission adjourned at [12:31](#) p.m.

APPROVED:

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Ric Williamson, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on April 28, 2005, in Austin, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation